

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

KENNETH BRACKETT and DAYNA
BRACKETT, Husband and Wife,

Respondent,

v.

RICHARD E. WALSH and LINDA M.
WALSH, Husband and Wife,

Appellant.

No. 37556-7-II

UNPUBLISHED OPINION

Houghton, J. — Kenneth and Dayna Brackett appeal the trial court’s grant of summary judgment in favor of Richard and Linda Walsh. The Bracketts argue that the trial court erred when it found a contract unambiguous and when it refused to consider extrinsic evidence. For different reasons than the trial court, we affirm.

FACTS

The Bracketts and the Walshes are neighbors with a history of legal disputes. When the two families purchased their homes, they retained the same realtor. Because the two properties shared a well, the parties executed an easement granting use of the well to both parcels. The easement included a shared expenses provision. But the realtor failed to record the easement and, after a dispute over the well, the Walshes sued the Bracketts.

Because of these disputes, the Bracketts and the Walshes entered into a settlement

agreement¹ wherein the Walshes agreed to vacate their home and list it for sale immediately in exchange for \$3,000 from the realtor. The parties also agreed to waive all claims raised in the lawsuit,² including those regarding the shared well. The Bracketts agreed that once the Walshes' home sold, they would repay approximately \$564 that the Walshes had paid into an account to maintain the well.

On April 29, 2007, the Walshes listed their home for sale and moved to Arizona in May. An initial sale did not go through after the buyer could not obtain financing. After it did not sell within approximately one month, the Walshes moved back to their home because they were unable to afford payments on both properties.

On July 13, the Bracketts filed a lawsuit, alleging that the Walshes breached the settlement agreement by returning to the house. The Bracketts moved for summary judgment, and the trial court denied the motion. In a later hearing, the Walshes moved for summary judgment, and the trial court granted the motion.

In granting the Walshes' summary judgment motion, the trial court stated,

It appears to this Court that the language of the contract is clear on its face, and while there may have been discussions outside the contract, I have to look at the terms of the contract. The contract required that the Walshes immediately list their property for sale. They did so. It required that they vacate their residence. They did so. Hindsight is often a great teacher, but I don't believe that's the guiding principle for my review of this situation.

I am going to grant summary judgment in this particular case based upon that analysis, that there is no ambiguity and that this is ripe for summary judgment in that I am considering only whether or not there, as a matter of law, has been a

¹ The disputed portion of the agreement provides, "Vacating and Selling. The Walshes shall immediately list their property for sale. The Walshes agree to vacate their residence next door to the Bracketts not later than May 31, 2007." Clerk's Papers at 7.

² Including any claims for quiet title, unjust enrichment, breach of contract, and slander of title.

breach of that clause.

Report of Proceedings (Feb. 15, 2008) at 10. The Bracketts appeal.

ANALYSIS

The Bracketts contend that the trial court erred in finding the contract's terms unambiguous. They argue that the trial court erred by refusing to consider extrinsic evidence before granting summary judgment. They argue further that the terms "vacate" and "residence" connote permanency. Appellant's Corrected Br. at 8-10. The trial court found no ambiguity whether the Walshes breached the contract.

We review the trial court's grant of summary judgment de novo, engaging in the same inquiry as the trial court and reviewing the facts and reasonable inferences from those facts in the light most favorable to the nonmoving party. *Overton v. Consol. Ins. Co.*, 145 Wn.2d 417, 429, 38 P.3d 322 (2002). We grant summary judgment when no genuine issue as to any material fact exists and the moving party is entitled to a judgment as a matter of law. CR 56(c). We may affirm the trial court's grant of summary judgment on any basis the record supports. *Rounds v. Nellcor Puritan Bennett, Inc.*, 147 Wn. App. 155, 162, 194 P.3d 274 (2008), *review denied*, 165 Wn.2d 1047 (2009).

Enforceable contracts contain reasonably certain terms, which provide a basis for determining the existence of breach and appropriate remedies. *Andrus v. Dep't of Transp.*, 128 Wn. App. 895, 898, 117 P.3d 1152 (2005); Restatement (Second) of Contracts § 33 (1981). When an agreement is not reasonably certain as to its material terms, we void it because with no valid offer there can be no valid acceptance. Restatement, *supra*, § 33.

Here, the trial court read the disputed portion of the contract and found no ambiguity. The settlement agreement provided that the Walshes would list their property for sale and vacate the residence by May 31, 2007. The Walshes listed their home for sale, moved out and left the state, attempted to sell, and later moved back for financial reasons. Neither party disputes that this is exactly what the Walshes did; the Bracketts merely claim that the Walshes breached by returning home a month later. The problem is that the contract could not be enforced as drafted. It is simply not possible to determine whether this constituted a material breach by reading the contract or, if the Bracketts breached, what the remedies might be.

Therefore, the agreement did not contain reasonably certain terms allowing the trial court to make a determination as to the existence of a breach or possible remedies. *Andrus*, 128 Wn. App. at 898; Restatement, *supra*, § 33. We agree with the trial court's grant of summary judgment but do so because it is an unenforceable contract that is in dispute. Thus, there was no genuine issue of material fact to resolve.³ CR 56(c).

ATTORNEY FEES

The Walshes request attorney fees on appeal, and the Bracketts request we vacate the trial court's award to the Walshes. Here, the parties entered into an unenforceable contract with a bilateral attorney fees provision. That the parties did not enter into an enforceable contract does not preclude us from awarding attorney fees where the parties argue liability based on that contract. *Herzog Aluminum, Inc. v. Gen. Am. Window Corp.*, 39 Wn. App. 188, 196-97, 692

³ We do not intend to imply the existence of any ambiguity in the term "vacate" by affirming on other grounds.

No. 37556-7-II

P.2d 867 (1984). The trial court did not err in awarding fees.

We award the Walshes reasonable attorney fees and costs on appeal on their compliance with RAP 18.1.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Houghton, J.

We concur:

Quinn-Brintnall, J.

Penoyar, A.C.J.